

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

v.

MARCUS VANGROSS HOPKINS,

Respondent.

No. 12-2225 PO

DECISION

Respondent Marcus Vangross Hopkins' peace officer license is subject to discipline.

Jurisdiction and Procedure

We have jurisdiction of this matter. § 590.080.2, RSMo.¹

The petitioner, the Director of the Department of Public Safety, filed a complaint on December 17, 2012, seeking to discipline Mr. Hopkins' peace officer license. Mr. Hopkins was personally served with our notice of complaint and notice of hearing on May 1, 2013, but did not answer or otherwise respond, and no attorney entered an appearance on Mr. Hopkins' behalf.

We held a hearing on June 26, 2013. The Director was represented by Assistant Attorney General Ron Dreisilker. Mr. Hopkins did not appear.

¹ All references to "RSMo" are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

By failing to answer or otherwise respond to the complaint, Mr. Hopkins has admitted the allegations contained therein. 1 CSR 15-3.380(7)(C)1.² At the hearing, the Director offered and we admitted authenticated exhibits—certified records from criminal proceedings against Mr. Hopkins and a custodian of records affidavit concerning Mr. Hopkins’ peace officer licensure. We base our findings of fact on the well-pleaded allegations contained in the complaint, and the hearing exhibits.

Findings of Fact

1. Marcus Vangross Hopkins’ Missouri peace officer license is presently active and has been active at all times relevant to this matter.

2. Mr. Hopkins served as a police officer for the City of Caruthersville and in that capacity, worked with the Bootheel Drug Task Force.

3. In July 2009, Mr. Hopkins made an entry in the Bootheel Drug Task Force’s expenditure log. The entry purported to have a genuineness it did not possess, and Mr. Hopkins made the entry with the purpose to defraud.

4. Mr. Hopkins pleaded guilty in July 2012 in the Circuit Court of Dunklin County, Missouri, to the crime of forgery under § 570.090.1(3), RSMo (Supp. 2011), a Class C felony.

Conclusions of Law

Mr. Hopkins’ peace officer license is subject to discipline under § 590.080, RSMo, because he committed a criminal offense, and because the offense was one of moral turpitude, committed on active duty, and under color of law.

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. §§ 590.020, .030, and .080, RSMo. When the Director files a complaint with this

² All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

Commission under § 590.080.2, asking us to determine there is cause for discipline, he bears the burden of proving so by a preponderance of the evidence. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

The Director alleges in his complaint that there is cause for discipline of Mr. Hopkins’ peace officer license under § 590.080.1 because Mr. Hopkins:

(2) Has committed any criminal offense, whether or not a criminal charge has been filed; [and]

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

A preponderance of the evidence demonstrates cause exists under both subsections.

§ 590.080.1(2), commission of any criminal offense

Section 590.080.1(2) provides that commission of any criminal offense suffices as cause for discipline, regardless of whether criminal charges were filed.

Forgery is a Class C felony under § 570.090.1(3), which provides in relevant part:

A person commits the crime of forgery if, with the purpose to defraud, the person...[m]akes or alters anything other than a writing, including receipts and universal product codes, so that it purports to have a genuineness...it does not possess.

Here, the undisputed facts demonstrate Mr. Hopkins committed the criminal offense of forgery. He altered the Bootheel Drug Task Force expenditure log, so that it purported to have a genuineness it did not possess, and he did so with the intent to defraud. Charges were in fact filed, and he pleaded guilty to the crime.

Cause for discipline therefore exists under § 590.080.1(2).

§ 590.080.1(3), acts committed on active
duty or under color of law that involve moral turpitude

Cause for discipline also exists under § 590.080.1(3), because Mr. Hopkins committed his criminal offense while on active duty and under color of law, and it was an act of moral turpitude.

Active duty or under color of law

For purposes of § 590.080.1(3), an act committed while on active duty or under color of law, that involves moral turpitude, suffices for purposes of establishing cause for discipline. The active-duty and under-color-of-law bases for discipline are disjunctive. The Director pleaded, and we conclude he established, both.

Whether a police officer is on active duty is not a matter of ascertaining the officer's normal working hours, but whether the officer possesses police authority. *State v. Palms*, 592 S.W.2d 236, 238-239 (Mo. App. W.D. 1979). The evidence shows that Mr. Hopkins was a police officer with the City of Caruthersville and in that capacity worked with the Bootheel Drug Task Force. It also shows he accessed the task force's expenditure log to commit his criminal offense. A preponderance of the evidence demonstrates Mr. Hopkins possessed police authority when he committed the offense and that he was on active duty.

A preponderance of the evidence also demonstrates Mr. Hopkins committed the offense under color of law. The phrase "under color of law" is not defined for purposes of § 590.080.1(3), so, as a legal term of art, it is afforded its "peculiar and appropriate meaning in law[.]" § 1.090, RSMo (2000). The phrase is commonly examined in the context of civil rights cases under 42 U.S.C. § 1983, where it means a state actor exercised power he possessed by virtue of state law and was only able to do so because he had the authority of state law. *Dossett*

v. First State Bank, 399 F.3d 940, 949 (8th Cir. 2005). A misuse of power possessed under state law is action taken under color of state law, and so includes acts taken under pretense of the law and acts overstepping the authority provided by the law. *Id.*

Here, Mr. Hopkins misused power he had, under color of law, when he took advantage of his position as a police officer assigned to a drug task force to access and make the entry in the task force's expenditure log.

We now turn to the remainder of § 590.080.1(3).

Moral turpitude

The remaining qualifiers of the bad acts covered by § 590.080.1(3) are moral turpitude or reckless disregard for safety. The Director claims, and we agree, that Mr. Hopkins' bad act is one of moral turpitude.

The peace officer disciplinary statute does not define "moral turpitude," but the concept exists in other disciplinary contexts and has been examined by Missouri courts. For example, in attorney disciplinary cases, the Supreme Court has "long defined moral turpitude as 'baseness, vileness, or depravity' or acts 'contrary to justice, honesty, modesty or good morals.'" *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1993) (and cases cited therein). *See also Brehe v. Mo. Dep't of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007) (same definition used in discipline of teaching certificate).

Not all criminal acts are acts of moral turpitude, *id.*, and not all acts of moral turpitude are criminal ones. Missouri courts have examined several types of criminal acts in license discipline cases and held that certain ones always constitute acts of moral turpitude, others may, and some never do. In *Brehe*, the court explained there are three classifications of crimes:

1. crimes that necessarily involve moral turpitude, such as fraud (Category 1 crimes);

2. crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
3. crimes that “may be saturated with moral turpitude,” yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

213 S.W.3d at 725 (quoting *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

Category 1 crimes, such as murder, rape, and fraud, are invariably crimes of moral turpitude, and Category 3 crimes require inquiry into the circumstances. *Id.*

Here, Mr. Hopkins’ criminal act—forgery—appears to be one that is “invariably” treated as an act of moral turpitude by the courts, because it involves the “purpose to defraud.” § 570.090.1(3).

Even if forgery was a Category 3 crime, we would have little difficulty concluding under the circumstances that Mr. Hopkins’ commission of it was “contrary to justice, honesty, modesty or good morals.” *Duncan*, 844 S.W.2d at 444. A police officer assigned to a drug task force is deeply involved in the investigation of suspected criminal activity and gathering evidence sufficient to support convictions. Defrauding the task force through its expense budget, by committing forgery, is antithetical to the operation of such a task force on a practical, day-to-day level. Moreover, associating such a task force with fraud, especially fraud associated with its records, jeopardizes its ability to effectively function in the criminal justice system. His crime was contrary to justice, honesty, modesty or good morals, and therefore qualifies as one of moral turpitude.

Because Mr. Hopkins committed his crime while on active duty and under color of law, and because it was an act of moral turpitude, cause for discipline exists under § 590.080.1(3).

Summary

Cause exists for discipline of Mr. Hopkins' peace officer license under § 590.080.1(2) and (3).

SO ORDERED on July 3, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner